

FIRST AMENDMENT
OF THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CALIFORNIA STATE COASTAL CONSERVANCY
FOR CONSTRUCTION OF THE
SONOMA BAYLANDS WETLAND DEMONSTRATION PROJECT
SONOMA COUNTY, CALIFORNIA

THIS AMENDMENT is enacted this 9th day of December, 1994, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the CALIFORNIA STATE COASTAL CONSERVANCY, an agency of the State of California (hereinafter the "Local Sponsor"), acting by and through its Executive Officer.

WITNESSETH, THAT:

WHEREAS, construction of the Sonoma Baylands Wetland Demonstration Project at Sonoma County, California, was authorized by Section 106 of the Water Resources Development Act of 1992, Public Law 102-580;

WHEREAS, the Local Sponsor is an agency of the State of California established pursuant to Division 21 of the California Public Resources Code (commencing with Section 31000) with responsibility for implementing a program of agricultural protection, area restoration, and resource enhancement in the coastal zone;

WHEREAS, on December 6, 1991, the Local Sponsor approved the Sonoma Baylands Tidal Marsh Restoration Project pursuant to Chapter 6 of Division 21 of the California Public Resources Code, providing for the restoration to tidal marsh of the real property referred to herein as the Sonoma Baylands site;

WHEREAS, the Government and the Local Sponsor entered into a Project Cooperation Agreement for construction of the Sonoma Baylands Wetland Demonstration Project at Sonoma County, California on May 6, 1994 (hereinafter the "Agreement");

WHEREAS, Article I of the Agreement provides that the restoration of tidal wetlands on the main unit of the 348-acre Sonoma Baylands site may include the placement of suitable dredged material from a future Federal navigation project pursuant to Article X of the Agreement;

WHEREAS, Article X of the Agreement provides that the Agreement must be amended in order to address the placement of dredged material on the main unit pursuant to Section 106 of the Water Resources Development Act of 1992;

WHEREAS, concurrently with the execution of this Amendment, the Government is entering into a Project Cooperation Agreement dated December 9, 1994 with the City of Oakland, California (hereinafter the "Oakland PCA") for Construction of the Oakland Inner Harbor Project and the Oakland Outer Harbor Project (hereinafter the "Oakland Projects");

WHEREAS, on October 19, 1994, the Local Sponsor approved the placement of dredged material from the Oakland Projects at the Sonoma Baylands, pursuant to the "Oakland Harbor 42-Foot Deep-Draft Navigation Improvement Project General Design Memorandum" approved by the Government on September 12, 1994, and authorized its Executive Officer to enter into an amendment to the Agreement on substantially the same terms and conditions set forth herein;

WHEREAS, the Government and the Local Sponsor have the legal authority and capability to perform as hereinafter set forth.

NOW, THEREFORE, the Government and the Local Sponsor agree to amend the Agreement as follows:

1. Unless otherwise specified, all paragraph and Article references are to paragraphs and Articles in the Agreement.

2. ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

a. Insert "reduction of the height of the bayfront levee," immediately after "levee," in line 16 of Paragraph A.

b. Insert "placement of approximately 2.0 million cubic yards (but no more than 2.5 million cubic yards) of suitable dredged material from the Oakland Projects," immediately after "consists of" in line 18 of Paragraph A.

c. Insert "reduction of the height of the bayfront levee," immediately after "levee," in line 19 of paragraph A.

d. Delete the second sentence of paragraph D. and replace it with the following sentence:

"Such costs shall include, but not necessarily be limited to: all preconstruction engineering and design costs; engineering and design costs during construction; actual construction costs, including the costs of constructing, relocating or modifying railroad bridges and approaches thereto; any costs for the placement of dredged material from the Petaluma River navigation channel within the pilot unit in excess of the costs necessary to accomplish the disposal of the dredged material in the most cost effective way, consistent with economic, engineering, and environmental criteria; costs of placement of suitable dredged material from the Oakland Projects within the main unit in excess of the costs necessary to accomplish the disposal of the dredged material in the most cost effective way, consistent with economic, engineering, and environmental criteria, as allocated by the Government to the Project in accordance with Article II.G of this Agreement; supervision and administration costs; costs of contract dispute settlements or awards (except as provided in Article II. G of this Agreement); the value of lands, easements, and rights-of-way, including suitable borrow areas, and the value of relocations, as may be required for the construction, operation, and maintenance of the Project; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIX.A; but shall not include any costs for operation, maintenance, repair, replacement or rehabilitation, increased costs for betterments, monitoring and remediation costs, or any costs of the Oakland Projects except as specified in Article II. G of this Agreement."

e. Insert the following paragraphs immediately after paragraph R:

"S. The term "suitable dredged material" shall mean material that the Government determines meets all applicable standards and criteria for the creation of wetlands pursuant to requirements of law and regulation; is consistent with waste discharge requirements of the San Francisco Bay Regional Water Quality Control Board, the Report, and the Oakland Harbor 42-Foot Deep-Draft Navigation Improvement Project General Design

Memorandum; and complies with the actions of all public agencies issuing permits and/or acting pursuant to the National Environmental Policy Act and California Environmental Quality Act, to the extent those acts are applicable.

T. The term "cost of construction of the general navigation features of the Oakland Projects" shall mean all costs incurred by the Port of Oakland and the Government in accordance with the terms of the Oakland PCA directly related to the construction of the general navigation features of the Oakland Projects. The term is defined in Article I.G of the Oakland PCA as "the total cost of construction of general navigation features of the project and the Sonoma Baylands Wetland Demonstration Project" and, subject to the terms of Oakland PCA, shall include but is not necessarily limited to the following costs for the Oakland Projects: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Articles XV.A.1. and A.2 of the Oakland PCA; costs of historic preservation activities in accordance with Articles XVIII.A. B., F.1., and G.1. of the Oakland PCA; actual construction costs, including the costs of alteration, lowering, raising or replacement and attendant removal of existing bridges over navigable waters of the United States; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of the Oakland PCA; costs of contract dispute settlements or awards; movement of the Navy sewer line in the Inner Harbor; and costs of audit in accordance with Articles X.B. and X.C. of the Oakland PCA. The term does not include the value of any lands, easements, rights-of-way, relocation, or borrow and dredged or excavated material disposal areas; any financial obligation for operation and maintenance of the general navigation features; any costs due to betterments; any costs of dispute resolution under Article VII of the Oakland PCA; any costs of aids to navigation; any costs of construction, operation, or maintenance of the local service facilities; or any cost of removal and disposal of dredged material associated with the maintenance of the current project depth plus one foot of overdepth dredging associated therewith."

3. ARTICLE II - OBLIGATIONS OF THE PARTIES

a. Delete "for all contracts" immediately following "solicitations" in line 9 of Paragraph A, and insert "for all contracts pertaining to the Project, including contracts for construction of the Oakland Harbor Projects," immediately after

"specifications" on line 10 of Paragraph A .

b. Insert the following paragraph immediately after paragraph F:

"G. For purposes of determining the costs of placement of suitable dredged material from the Oakland Projects within the main unit in excess of the costs necessary to accomplish the disposal of the dredged material in the most cost effective way, consistent with economic, engineering, and environmental criteria, the Government shall allocate the cost of construction of general navigation features of the Oakland Projects between the Project and the Oakland Projects as follows:

1. 4.370% of the cost of construction of general navigation feature of the Oakland Projects shall be allocated to the Project, except as provided in subparagraphs 2 and 3 below.

2. There shall not be allocated to the Project any portion of the costs of the Oakland Projects that is associated with contract delays, increased costs, change orders, contract modifications, or dispute settlements and awards, resulting from the fault or negligence of the Port of Oakland, resulting from deferments of the award of contracts or execution of contract modifications or change orders pursuant to Article II. A.3 of the Oakland PCA, or resulting from changed conditions at Galbraith Golf Course.

3. There shall be allocated to the Project 100% of the portion of the cost of construction of the general navigation features of the Oakland Projects that is associated with contract delays, increased costs, change orders, contract modifications, or dispute settlements and awards resulting from the fault or negligence of the Local Sponsor, resulting from deferments of the award of contracts or execution of contract modifications or change orders pursuant to Article XVII.C. of this Agreement, or resulting from changed conditions at the Sonoma Baylands site. It is expressly understood and agreed that, assuming that no party is at fault or negligent and that there are no changed conditions at the Sonoma Baylands site, it is not possible to determine in advance of actual construction the exact amount of dredged material that is required to be placed at the Sonoma Baylands site to achieve the desired elevation of + 2.0 feet NGVD, and some variance is unavoidable and expected between the preconstruction estimated amount and the actual amount of dredged material required for that purpose. Accordingly, any portion of the cost of construction of general navigation features of the Oakland Projects that is associated with contract delays, increased costs, change orders, contract modifications, dispute settlements and awards, and resulting from such unavoidable and expected variance, shall not be deemed to be a result of "changed

conditions at the Sonoma Baylands site" but shall be allocated in accordance with subparagraph 1 of this Paragraph G.

4. All costs of the Oakland Projects not specifically allocated to the Project shall be allocated to the Oakland Projects."

4. ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. Insert ", including changes in costs of construction of general navigation features of the Oakland Projects" immediately after "total project costs" in line 6 of Paragraph B.

5. ARTICLE VII - METHOD OF PAYMENT

a. Delete the third sentence of paragraph A and replace it with the following sentence:

"Project construction costs are currently estimated to be \$8,500,000 and the Local Sponsor's share of project construction costs is currently estimated to be \$2,125,000."

b. Delete the fourth sentence of paragraph A and replace it with the following sentence:

"In order to meet its share of these project construction costs, the Local Sponsor must provide a cash contribution currently estimated to be \$820,000."

6. ARTICLE X - RESTORATION OF MAIN UNIT

a. Delete paragraph B and replace it with the following paragraph:

"B. If the placement of dredged material from the Oakland Projects within the main unit has not been completed within a period of four years and six months from the date of the First Amendment to this Agreement, the Government and the Local Sponsor shall either:

1. Amend this Agreement to extend the four year and six month period discussed above; provided, however, that if this Agreement has not been amended to further extend the period within five years from the date of the First Amendment to this Agreement, the parties shall restore the main unit as provided in paragraph B.2. below; or

2. Take the following actions to restore the main unit:

a. Restore the main unit to tidal action within a period of five years and six months from the date of the First Amendment to this Agreement (including the removal of Weirs No. 1 and 2, breaching and reduction in heights of the bayfront levee, and isolation of Peninsulas No. 5/6, 8/9, and 10/11/12 from the peripheral levee),

b. Initiate monitoring of the main unit upon restoration of tidal action to the main unit, and

c. Perform any required remediation."

b. Insert the following paragraph C immediately after paragraph B:

"C. Dredged material may be placed on the main unit from the Oakland Projects only pursuant to this Agreement as amended.

1. Except solely for provisions of this Agreement that expressly require the Local Sponsor to share the cost of construction of the general navigation features of Oakland Projects, the Local Sponsor shall have no obligation, responsibility or liability with respect to the Oakland Projects.

2. No amendment to the Oakland PCA after the date of its execution, concurrently with the execution of the First Amendment to this Agreement, shall affect any of the rights or obligations of the parties to this Agreement or any of the costs of construction of general navigation features of the Oakland Projects, as allocated to the Project under provisions of this Agreement, except by written amendment of this Agreement."

7. ARTICLE XVII - TERMINATION OR SUSPENSION

a. Delete "\$8,500,000" in line 6 of paragraph C. and replace it with "\$10,000,000".

8. All provisions of the Agreement not specifically amended herein, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

BY: for [Signature]

JOHN H. ZIRSCHKY
Acting Assistant Secretary
of the Army (Civil Works)

DATE: 9 Dec 94

THE CALIFORNIA STATE COASTAL
CONSERVANCY

BY: [Signature]

RONALD W. KUKULKA
Deputy Executive Officer

DATE: 12/2/94


APPROVED: STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES

FORM	POLICY	BUDGET
Department of General Services		
BY: APPROVED		
DEC - 6 1994		
ORIGINAL SIGNED BY JOHN G. BRAKKE		
BY Ass't. Chief Counsel		

CERTIFICATE OF AUTHORITY

I, Marcia Grimm, do hereby certify that I am the principal legal officer of the California State Coastal Conservancy, that the California State Coastal Conservancy is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the California State Coastal Conservancy, as amended, in connection with the Project, and to pay damages, if necessary, in event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Amendment on behalf of the California State Coastal Conservancy have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 2nd day of December, 1994.



Senior Staff Counsel

CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Ronald W. Kukuika, Deputy
Executive Officer
California State Coastal Conservancy

DATE: 12/2/94